

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. Following the issuing of the license the Department inspected the home several times, and issues arose regarding the petitioner's compliance with the conditions of her license and other Department regulations. On November 7, 2000 the Department notified the petitioner that it was revoking her conditional license.

3. Following a Commissioner's Review hearing with the petitioner and her attorney the Department issued a decision on December 18, 2000 upholding the revocation of the petitioner's conditional license. The petitioner, through her attorney, filed an appeal of this decision (Fair Hearing No. 16,841) with the Human Services Board on December 21, 2000.

4. A hearing was convened in Morrisville, Vermont on April 5, 2001, at which the petitioner appeared with her attorney. The parties agreed at that time that during the pendency of the appeal the petitioner's conditional license had expired (on December 31, 2000) under its express terms and that the petitioner had not reapplied for a license. The parties informed the hearing officer that in the meantime the petitioner had continued to operate her facility, but that there was a pending court action to determine whether the petitioner could continue with her lease of the premises. The parties agreed that the issue in Fair Hearing No. 16,841 was moot in that the license had expired. The parties agreed that the petitioner would promptly reapply for a license and that the matter would be continued to hold an evidentiary hearing if (as was expected) the Department denied this application. The parties failed to reach an agreement regarding the petitioner's continued operation of the facility during the pendency of any new appeal.

5. On April 24, 2001 the petitioner and her attorney filed a request for hearing with the Board (Fair Hearing No. 17,057) to appeal the Department's denial of the petitioner's reapplication for a license dated April 16, 2001.

6. On April 27, 2001, the board mailed the parties a notice of hearing scheduled for May 18, 2001 in Montpelier, Vermont. The parties subsequently agreed to continue the matter until June 29, 2001, when another hearing was scheduled.

7. On June 14, 2001, the Board received a notice from the petitioner's attorney that she was withdrawing her representation of the petitioner.

8. On June 29, 2001 the Department appeared with its witnesses at the hearing. One half-hour before the hearing was to commence the petitioner e-mailed the Board that she would not be appearing at the hearing because she felt that pending civil suits in court had to be "dealt with before evidence can be reviewed before this board". At that time the hearing officer granted leave to the Department to file a motion to dismiss.

9. The Department filed its motion with accompanying documents on July 9, 2001.

10. On July 18, 2001 the hearing officer sent a memorandum to the parties directing the petitioner to respond in writing to the Department's motion by August 1, 2001.

11. To date, the Board has heard nothing more from the petitioner.

12. In its motion the Department represented that due to imminent court action the petitioner is in the process of losing her business and the building in which it is based because of violations of the lease agreement with her landlord and because of uncorrected fire safety defects on the premises. As noted above, despite being specifically directed to do so, the petitioner has not responded in any way to these allegations.

ORDER

DAD's motion to dismiss Fair Hearing No. 16,841 is granted on the basis of mootness, as previously agreed by the parties. DAD's motion to dismiss Fair Hearing No. 17,057 is granted on the basis of the petitioner's failure to pursue this appeal.

REASONS

As noted above, the petitioner, who was represented by an attorney at the time, agreed in April that her initial appeal, Fair Hearing No. 16,841, was moot because the license being revoked had expired under its express terms shortly after the Department's decision to revoke it. As agreed by the parties, the petitioner subsequently filed a reapplication for a license

to operate her residential care home, which the Department promptly denied. The petitioner filed Fair Hearing No. 17,057 to appeal this decision.

As noted above, the petitioner did not appear at the scheduled hearing in this matter and has not responded to the hearing officer's direction that she answer the Department's motion to dismiss in this matter. Except for the brief e-mail message she sent on June 29 (see supra) the Board has heard nothing from the petitioner since she filed her request for hearing on April 24, 2001. It must be concluded from this that the petitioner has failed to adequately pursue her appeal.

It should be noted, however, that dismissal of the petitioner's appeal at this time does not mean that she cannot reapply to the Department for a license now or in the future if she wishes to continue to operate her residential care home.

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